

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89579-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
this 3rd day of July 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 5, 2008, XXXXX, authorized representative of XXXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on May 12, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on May 28, 2008.

The Petitioner is enrolled for health care coverage through the State of Michigan, a self-funded group. BCBSM administers the plan. The issue in this external review can be decided by a

contractual analysis. The contract involved here is the State Health Plan's *Your Benefit Guide* (the guide) and its amended provisions, the documents that describe the Petitioner's coverage. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

From October 20, 2006, through December 20, 2007, the Petitioner rented a continuous positive airway pressure (CPAP) machine from XXXXX of XXXXX, a nonparticipating provider. The monthly rental charges for this period were \$2,775.65.¹ BCBSM approved \$711.80 for this item and, after applying a 20% copayment sanction because the provider was out-of-network, paid \$569.38 to the Petitioner.

The Petitioner appealed BCBSM's payment amount. BCBSM held a managerial-level conference on February 28, 2008, and issued a final adverse determination dated March 6, 2008.

III ISSUE

Is BCBSM required to pay an additional amount for the Petitioner's CPAP machine?

IV ANALYSIS

Petitioner's Argument

The Petitioner was diagnosed with obstructive sleep apnea. He had a sleep study which indicated that he would benefit from a CPAP machine and sometime later he received a call from XXXXX indicating the CPAP machine had arrived and he needed to come to their location for instructions on how to use it. He believes the machine was ordered by his physician. He picked up the machine on October 20, 2006. He says he was not informed that XXXXX was an out-of-network provider or that he would be responsible for some of the charges for the machine. The

1. Act 495, which authorizes this review, was effective on December 29, 2006. Therefore, while the terms of the Petitioner's coverage were the same for the entire period of October 20, 2006, through December 20, 2007, the

Petitioner also says he was not told that the machine was a rental and it could be returned if he was unable to use it.

The Petitioner tried the machine for a month or two but he was unable to breathe properly through the mask; he needed surgery before he could use it. He postponed follow up while he dealt with a diagnosis of smoldering multiple myeloma. Then in August 2007 he was told by his physician at the XXXXX that if he did not deal with his sleep apnea he could die from a stroke. In September 2007 he had the surgery but it could not be immediately determined if he still needed the CPAP.

It was not until July 20, 2007, that the Petitioner received a bill for \$1,620.65 for the CPAP machine. BCBSM informed him that since XXXXX was an out-of-network provider he would be responsible for a 20% copayment as well as the difference between the amount XXXXX charged and the amount paid by BCBSM. He says he did not choose XXXXX and was not aware that it was not in BCBSM's network.

BCBSM also informed the Petitioner that the closest network provider was in XXXXX which is 140 miles from his home while XXXXX is only 30 miles from his home. The Petitioner lives in the far western part of the Upper Peninsula of Michigan and believes that BCBSM should consider his special circumstances in reviewing his claim.

The Petitioner wants BCBSM to pay the full charge for the CPAP machine.

BCBSM's Argument

BCBSM says that the guide clearly states that BCBSM pays its "approved amount" for covered services. The approved amount is the lesser of the provider's charge or BCBSM's maximum payment level for the service. The guide does not guarantee that charges will be paid in full and also indicates that there may be copayments and deductibles for using a non-network provider. Moreover, since XXXXX does not participate with BCBSM, it is not required to accept

BCBSM's approved amount as payment in full and may bill the Petitioner for the difference between its charge and BCBSM's payment.

The amended provisions of the State Health Plan indicate that effective October 1, 2005, durable medical equipment (DME) acquired from a network provider will be covered at 100% while DME from out-of-network providers will be covered at 80% of BCBSM's approved amount. No deductible will be required in either case. BCBSM approved \$711.80 for the Petitioner's CPAP machine. Since the provider was out-of-network, a 20% copayment was applied and \$569.38 was paid to the Petitioner.

BCBSM contends that it has paid the proper amount for the Petitioner's CPAP machine and is not required to pay more.

Commissioner's Review

XXXXX is a nonparticipating provider, i.e., it is not in the State Health Plan's PPO network. The guide describes how benefits are paid when services or equipment are received from a nonparticipating provider. First, BCBSM pays an "approved amount" for covered services or items - it does not guarantee that provider charges will be paid in full. The "approved amount" is defined in the guide as "The maximum payment level approved by Blue Cross Blue Shield of Michigan or the provider's charge for the covered service, whichever is lower."

The amendments to the State Health Plan indicate that effective October 1, 2005, a copayment of 20% of BCBSM's approved amount applies to DME acquired from a nonparticipating provider. Furthermore, the amount charged by a nonparticipating (or non-network) provider may be significantly higher than BCBSM's approved amount for the service, and since nonparticipating providers have not signed agreements with BCBSM to accept its approved amount as payment in full, the Petitioner is responsible for the difference between the provider's charge and BCBSM's approved amount.

The Petitioner says that the closest network DME provider was 140 miles from his home and

that he was also not aware that XXXXX was not in the State Health Plan's PPO network. However, there is nothing in the language of the guide or its amendments that requires BCBSM to waive the 20% non-network copayment, even if no network provider was available. The explanation of benefit forms submitted show that BCBSM paid its full approved amount minus a 20% copayment for the CPAP machine.

The Commissioner finds that BCBSM is not required to pay any additional amount for the Petitioner's CPAP machine.

**V
ORDER**

BCBSM's final adverse determination of March 6, 2008, is upheld. BCBSM's decision is consistent with the terms and conditions of the Petitioner's coverage.

This is a final decision of an administrative agency. A person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. See MCL 550.1915(1), made applicable by MCL 550.1952(2).

A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.